

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

R.P. PENDLETON JR.,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

)  
) Case No. DISM-98-0069  
)

) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD  
)

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, NATHAN S. FORD JR., Vice Chair; and GERALD L. MORGEN, Member. The hearing was held in the Chelan Room of the Holiday Inn Express in Wenatchee, Washington, on July 8, 1999.

Subsequent to the hearing, but prior to the signing of this order, the offices held by the members of the Board changed. The signatures on this order reflect the current positions.

1.2 **Appearances.** Appellant R.P. Pendleton Jr. was present and appeared *pro se*. Respondent Department of Social and Health Services was represented by Donna J. Stambaugh, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, insubordination, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant accessed

1 confidential agency records to obtain information about a client which Appellant then used for his  
2 personal benefit.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.  
6 Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf,  
7 PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053  
8 (1994).

## 10 II. FINDINGS OF FACT

11 2.1 Appellant R.P. Pendleton Jr. was an Office Assistant and a permanent employee for  
12 Respondent Department of Social and Health Services (DSHS) at the Wenatchee Community  
13 Service Office (CSO). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW  
14 and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal  
15 with the Personnel Appeals Board on December 14, 1998.

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17 2.2 As an Office Assistant, Appellant's duties included answering the telephone and routing  
18 calls to the appropriate staff. In addition, Appellant had access to information in client files and  
19 access to the DSHS Automated Client Eligibility System (ACES) which contained confidential  
20 information about clients.

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22 2.3 By letter dated December 1, 1998, Respondent notified Appellant of his dismissal from his  
23 position effective December 18, 1998. The letter charged Appellant with neglect of duty,  
24 insubordination, gross misconduct and willful violation of published employing agency or  
25 Department of Personnel rules or regulations. Respondent alleged that Appellant obtained

1 confidential information regarding a client receiving assistance which he used for his own personal  
2 benefit. (Exh. R-1).

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4 2.4 In the early morning of May 29, 1998, Appellant entered the home of DSHS client  
5 Stephanie Alfaro uninvited and engaged in a confrontation with Kevin Strickland, Ms. Alfaro's  
6 boyfriend. As a result of the encounter, the East Wenatchee Municipal Court placed Appellant on  
7 home monitoring and a no contact order was issued which prohibited Appellant from contacting  
8 Ms. Alfaro. Subsequently, Appellant again went to Ms. Alfaro's home uninvited.

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10 2.5 On July 30, 1998, Mr. Strickland reported Appellant's actions to Dianne Behrens, the  
11 Wenatchee CSO Office Manager and Linda Brillhart, supervisor. On July 31, 1998, Ms. Behrens  
12 and Ms. Brillhart reported the results of their meeting with Mr. Strickland to Joanne Palmer, Acting  
13 CSO Administrator. On August 6, 1998, Ms. Alfaro and Mr. Strickland met with Ms. Palmer. In  
14 addition, Ms. Alfaro filed a written complaint with DSHS against Appellant. Ms. Alfaro alleged  
15 that Appellant had reviewed her public assistance records.

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17 2.6 Ms. Behrens initiated a Personnel Conduct Report (PCR) against Appellant on August 7,  
18 1998. She completed her supervisor's report on September 2, 1998. On September 25, 1998, Ms  
19 Palmer determined that misconduct had occurred. (R-2).

20  
21 2.7 Appellant denied accessing Ms. Alfaro's DSHS file. However, we find the testimony of Ms.  
22 Alfaro credible. Throughout the DSHS disciplinary process and during the hearing on this appeal,  
23 Ms. Alfaro's statements and testimony were consistent. Appellant's statements and testimony have  
24 not been consistent. For example, in response to the PCR, Appellant stated that a friend told him  
25 that Ms. Alfaro was receiving medical benefits. Yet, during his testimony before the Board,

1 Appellant stated that he asked Ms. Alfaro if she was a DSHS client and Ms. Alfaro told him that she  
2 was on basic health.

3  
4 2.8 Appellant had met Ms. Alfaro through a mutual acquaintance sometime in February or  
5 March of 1998. Subsequently, Appellant asked Ms. Alfaro if she was on public assistance and Ms.  
6 Alfaro told him no. Appellant informed Ms. Alfaro that he had looked her up on the DSHS  
7 computer and that she was on public assistance because she was receiving medical benefits.  
8 Appellant also showed Ms. Alfaro copies of her driver's license and social security card which he  
9 had made from information in her DSHS file.

10  
11 2.9 After Appellant revealed information from her file to Ms. Alfaro, she was hesitant to apply  
12 for further public assistance and she chose not to apply for employment with the agency because  
13 she did not wish to have further contact with Appellant.

14  
15 2.10 In addition, Appellant used the DSHS business telephones to page Ms. Alfaro and had her  
16 return his calls by calling DSHS business telephone numbers.

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18 2.11 Prior to the incidents giving rise to this appeal, Appellant received a letter of reprimand  
19 dated May 28, 1998. The letter of reprimand addressed Appellant's involvement with T.N., a  
20 DSHS client, and advised Appellant to review DSHS Policy 6.04, Standards of Ethical Conduct. In  
21 addition, during his new employee orientation in April 1996, Appellant was made aware of the  
22 policy and his responsibility to comply with the provisions of the policy.

1 2.12 Policy 6.04 sets forth the standard of conduct expected of DSHS employees and prohibits an  
2 employee from using his or her position for personal gain and prohibits accessing DSHS  
3 information for personal gain.

4  
5 2.13 Ben Green, Regional Administrator and Appellant's appointing authority, reviewed the PCR  
6 materials and determined that Appellant had used confidential client information for his own  
7 personal use and concluded that disciplinary action was warranted. Mr. Green determined that  
8 Appellant felt he was being harassed by the agency, that he had not put the agency at risk and that  
9 he had done nothing wrong. However, Mr. Green found that Appellant's actions were contrary to  
10 agency policy and contrary to the prior letter of reprimand Appellant had been given. Mr. Green  
11 concluded that Appellant had misused his position with DSHS, acted contrary to the mission of the  
12 agency, violated the trust the agency places in its employees to treat clients with dignity and  
13 respect, and adversely impacted the high quality of service the agency expects its employees to  
14 provide to its clients and the public. Based on Appellant's past history of behavior of a similar  
15 nature and his failure to accept responsibility to abide by agency policy, Mr. Green determined that  
16 dismissal was the only sanction that would prevent recurrence and cause a change in Appellant's  
17 behavior.

### 18 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that DSHS has a duty to protect vulnerable citizens and the confidential  
21 information they provide to the agency. DSHS clients trust that the information they reveal to the  
22 agency will be used appropriately. Respondent contends that Appellant abused the trust placed in  
23 him as an employee of the agency when he accessed confidential information about Ms. Alfaro for  
24 his personal reasons. Respondent asserts that Appellant's actions intimidated and had an adverse  
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1 impact on Ms. Alfaro. Respondent contends that Appellant abused his position when he  
2 inappropriately accessed and used confidential client information and that dismissal is appropriate.

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4 3.2 Appellant asserts that he never looked in Ms. Alfaro's file and that she filed a false report  
5 against him because she was being intimidated by Mr. Strickland. Appellant argues that Ms. Alfaro  
6 was interested in dating him and that she feared retaliation from Mr. Strickland. Appellant further  
7 argues that he felt it was okay for him to violate the no contact order because no threats of bodily  
8 harm were involved. Appellant also argues that he was single and he did not have a problem  
9 socializing with clients because most of the single women in Wenatchee were on public assistance.  
10 Appellant asserts that he knew that Ms. Alfaro was receiving basic medical benefits through DSHS,  
11 but he did not believe that she was a DSHS client.

#### 12 13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
15 herein.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
18 the charges upon which the action was initiated by proving by a preponderance of the credible  
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
21 Corrections, PAB No. D82-084 (1983).

22  
23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
25 of Social & Health Services, PAB No. D86-119 (1987).

1  
2 4.4 Respondent has met its burden of proof that Appellant neglected his duty when he accessed  
3 Ms. Alfaro's confidential client records and then used the information for personal reasons.  
4 Appellant's argument that he did not believe Ms. Alfaro was a DSHS client lacks credibility and  
5 does not negate his duty to abide by the rules and regulations of the agency and to comply with the  
6 agency's expectations of professional behavior and trustworthiness.

7  
8 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
9 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.  
10 Dep't of Social and Health Services, PAB No. D94-025 (1995).

11  
12 4.6 Respondent has met its burden of proof that Appellant's actions constituted insubordination.  
13 Within hours of receiving the letter of reprimand addressing his behavior toward client T.N.,  
14 Appellant engaged in similar behavior toward Ms. Alfaro. Clearly, Appellant's actions constituted  
15 insubordination.

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17 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
18 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

19  
20 4.8 Respondent has met its burden of proof that Appellant's actions rose to the level of gross  
21 misconduct. Appellant's repeated pattern of behavior adversely affected clients of the agency.

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23 4.9 Willful violation of published employing agency or institution or Personnel Resources  
24 Board rules or regulations is established by facts showing the existence and publication of the rules  
25 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the

1 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &  
2 Health Services, PAB No. D93-053 (1994).

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4 4.10 Respondent has met its burden of proof that Appellant was aware of DSHS Policy 6.04 and  
5 that his actions were contrary to the policy.

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7 4.11 Under the facts and circumstance of this case, Respondent has proven that dismissal is the  
8 appropriate disciplinary sanction, and the appeal should be denied.

9  
10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of R.P. Pendleton Jr. is denied.

12  
13 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 1999.

14 WASHINGTON STATE PERSONNEL APPEALS BOARD

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16 \_\_\_\_\_  
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